

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

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date: April 30, 2012

to: Holly L. McCann  
Chief, Excise Tax Program

from: Stephanie Bland  
Senior Technician Reviewer, Branch 7  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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subject: Applicability of Section 6720A Penalties

This Chief Counsel Advice responds to your request for assistance dated September 8, 2011. This advice may not be used or cited as precedent.

ISSUE

When may the IRS impose the penalties under § 6720A of the Internal Revenue Code (Code)?

CONCLUSION

The IRS may impose the § 6720A penalties only if a fuel reseller or retailer has actual knowledge that (i) the fuel it transfers for resale, sells for resale, or holds out for sale or resale will be used in a diesel-powered highway vehicle or train, and (ii) the fuel does not meet the applicable United States Environmental Protection Agency (EPA) regulations.

LAW AND ANALYSIS

Section 6720A(a) provides that any person who knowingly transfers for resale, sells for resale, or holds out for resale any liquid for use in a diesel-powered highway vehicle or a diesel-powered train which does not meet applicable United EPA regulations (as defined in § 45H(c)(3)), shall pay a penalty of \$10,000 for each such transfer, sale, or

holding out for resale, in addition to the tax on such liquid (if any).

Section 6720A(b) provides that, in the case of retailers, any person who knowingly holds out for sale (other than for resale) any liquid described in § 6720A(a), shall pay a penalty of \$10,000 for each such holding out for sale, in addition to the tax on such liquid (if any).

You asked what conditions must be satisfied in order to impose the § 6720A penalties.

Section 6720A was added to the Code by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Act) (Pub. L. 109–59). The legislative history to the Act does not clarify what Congress intended when it used the word “knowingly” in § 6720A. If a statute uses words that it does not define, it is necessary to look to the ordinary and everyday meaning of the words in question. Crane v. Comm’r, 331 U.S. 1, 6 (1947). The American Heritage Dictionary defines “knowingly” as “possessing knowledge, information, or understanding” and “deliberate; conscious.”<sup>1</sup>

These definitions suggest that the word “knowingly” requires actual knowledge. Based on the plain language of § 6720A, the IRS may impose the penalty only if the following two conditions are satisfied:

- (i) The reseller or retailer has actual knowledge that the liquid transferred for resale, sold for resale, or held out for sale or resale will be used in a diesel-powered highway vehicle or train; and
- (ii) The reseller or retailer has actual knowledge that the liquid transferred for resale, sold for resale or held out for sale or resale does not meet the applicable EPA regulations.

Once the conditions described above are satisfied in a particular case, the IRS has enforcement discretion regarding whether to assert the penalties in that case. However, while the IRS may exercise its enforcement discretion and decide not to assert § 6720A penalties in a particular case, that does not mean that the taxpayer is relieved from other applicable penalties imposed by the Code. Further, the IRS’s exercise of its enforcement discretion in not asserting § 6720A penalties does not relieve the taxpayer from enforcement action taken by the EPA for violations of provisions under the EPA’s jurisdiction.

Please call Mike Beker at (202) 622-3130 if you have any further questions.

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<sup>1</sup> *The American Heritage Dictionary of the English Language, Fourth Edition*. (2003). Retrieved April 27, 2012, from <http://www.thefreedictionary.com/knowingly>